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Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY SANTIAGO

C O N F I D E N T I A L STATE 241126

E.O. 11652: GDS

TAGS: EFIN

SUBJECT: CIVAIR AGREEMENT - LAN TAX PROBLEMS

REFS: A) STATE 180071, B) STATE 204372, C) SANTIAGO 5923,
D) SANTIAGO 6363

1. REGARDING STATUS OF CIVAIR AGREEMENT, GOC EMBASSY WASHINGTON MET AUGUST 26 WITH OFFICE OF TAX POLICY, TREASURY, WHICH NEGOTIATES TAX TREATIES AND AGREEMENTS. AT MEETING (SUBSTANCE OF WHICH CONTAINED REFTEL B) BOTH SIDES AGREED ON NEED TO SIGN AGREEMENT THIS YEAR SO RETROACTIVE TAX EXEMPTION TO JAN. 1, 1975 COULD BE ACHIEVED. CHILEAN EMBASSY INDICATED THEY WOULD CONTACT TREASURY REGARDING FUTURE SCHEDULING OF TALKS TO WORK OUT TECHNICAL DETAILS OF AGREEMENT.

2. GOC EMBASSY ASKED TREASURY SEPT. 25 TO ARRANGE MEETING ON SEPT. 26 FOR MARIO ARNELO, SPECIAL AMBASSADOR
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TO UNGA WHO IS ALSO GENERAL ATTORNEY FOR LAN. HE WISHED TO DISCUSS, ON A POLICY LEVEL, THE TAX AGREEMENT AND

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LAN'S IRS PROBLEMS. DUE TO TRAVEL SCHEDULE OF TAX POLICY STAFF, TREASURY INDICATED MEETING WOULD HAVE TO BE SCHEDULED IN ABOUT TWO WEEKS.

3. REGARDING TAX PROBLEMS OF LAN CHILE, INFORMATION THAT CAN BE LEGALLY PROVIDED BY IRS TO DEPT. IS EXTREMELY LIMITED. FACTS ON ANY TAX INVESTIGATION MAY BE RELEASED ONLY BY THE TAXPAYER, AND THE LAN CASE IS NOT EXEMPT FROM THIS POLICY. THEREFORE, ACCURATE INFORMATION ON STATUS OF CASE HAS BEEN DIFFICULT TO OBTAIN. INFORMATION FROM LAN LAWYERS IN NEW YORK SEEMS TO HAVE TAKEN ON EXAGGERATED IMMEDIACY. FOR EXAMPLE, THE CHILEAN EMBASSY INFORMED DEPARTMENT ON SEPT. 25 (FOR THE SECOND TIME IN TWO MONTHS) THAT LAN HAD RECEIVED A TAX ASSESSMENT, THIS TIME FOR $1.4 MILLION AND PAYABLE IN 90 DAYS. IRS AGAIN ASSURED DEPT. THAT NO ASSESSMENT HAD BEEN GIVEN TO LAN. IRS SEEMED TO INDICATE THAT CASE STILL AT LEVEL OF DETERMINING A DEFICIENCY (SEE PARA 5 REFTEL A FOR PROCEDURAL STEPS). IRS STATED THAT IN GENERAL, INITIAL CONTACT WITH A TAXPAYER MAY INVOLVE CORRESPONDENCE FROM IRS WHICH DISCUSSES PROPOSED ADJUSTMENTS AND GIVES TAXPAYER OPPORTUNITY TO COME BACK WITH BOOKS AND RECORDS. THIS MAY HAVE BEEN MISINTERPRETED AS AN ASSESSMENT.

4. EVEN AFTER AN ASSESSMENT THERE ARE LEGAL STEPS AVAILABLE TO THE TAXPAYER TO CONTEST THE SUM OWED, AND REDUCTIONS ARE OFTEN WORKED OUT. WE UNDERSTAND ARRANGEMENTS ARE SOMETIMES MADE FOR TAXPAYERS TO STRETCH OUT REPAYMENT OF ARREARAGE OVER TIME. WE WOULD ASSUME THAT IF LAN DOES NOT HAVE THE MONEY AND (AS ALLEGED BY THE EMBASSY) HAS BEEN OPERATING AT A LOSS IN RECENT YEARS, SOME REPAYMENT SCHEDULE ON THE ULTIMATELY DETERMINED AMOUNT COULD BE REACHED.

5. WE DO NOT FEEL IT WOULD BE APPROPRIATE OR USEFUL FOR THE DEPT. TO FORMALLY APPROACH IRS THROUGH A LETTER TO THE COMMISSIONER (THE ONLY PROCEDURE AVAILABLE). EVEN IF SPECIAL TREATMENT COULD BE GIVEN LAN, IT WOULD SET AN UNDESIRABLE PRECEDENT FOR OTHER TAX CASES.
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IN PAST NEGOTIATIONS WITH SEVERAL COUNTRIES WE HAVE STRESSED THE LIMITED AUTHORITY UNDER EXECUTIVE AGREEMENTS ON TAX ARREARAGES AND HAVE STEADFASTLY REFUSED TO ELIMINATE TAX ARREARAGES OF MORE THAN THE CURRENT YEAR VIA RETROACTIVITY OF THE AGREEMENT. EVEN ESTABLISHING A QUID PRO QUO IN USG TREATMENT OF TAX DISPUTES AS A CONDITION TO THE SIGNING OF A TAX AGREEMENT COULD BE DAMAGING. SHOULD THE GOC DELAY SIGNING AN AGREEMENT THIS YEAR WITHOUT THESE SPECIAL ASSURANCES, IT WOULD ONLY ADD 1975 TAXES TO WHATEVER AMOUNT IT IS ULTIMATELY DETERMINED THEY

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ALREADY OWE.

6. WE WILL INFORM EMBASSY OF DISCUSSIONS WITH ARNELO AND

CONTINUE CLOSE CONTACT WITH CHILEAN EMBASSY/WASHINGTON
ON LAN TAX PROBLEM. KISSINGER

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